

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Marianne D. O'Hara,

Plaintiff,

v.

GBS Corporation,

Defendant.

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CASE NO. 5:12 CV 2317

MEMORANDUM OPINION AND
ORDER

The Court referred this case to Magistrate Judge George Limbert for general pre-trial supervision on September 25, 2012. While under Magistrate Judge Limbert's supervision, defendant moved the Court to dismiss counts 1 and 2 of plaintiff's first amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and thereafter, to decline to exercise supplemental jurisdiction over plaintiff's remaining state law claim.

Plaintiff's first amended complaint alleges that while she was an employee for defendant GBS, she requested and received leave to care for her brother. Plaintiff was subsequently terminated and she sued GBS for violating the Family Medical Leave Act (FMLA) and for breach of contract under Ohio law. Defendant's Rule 12(b)(6) motion to dismiss the two FMLA counts is based on the argument that care for a sibling is not a covered family member to which FMLA protection applies. ECF 5. Defendant's motion was fully briefed by the parties.

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Magistrate Judge Limbert issued a Report and Recommendation recommending that the Court grant defendant's motion to dismiss FMLA counts 1 and 2 of plaintiff's first amended complaint, and thereafter, decline to exercise supplemental jurisdiction over state law count 3. ECF 13. Plaintiff did not file an objection to Magistrate Judge Limbert's Report and Recommendation.

Under the relevant statute:

[T] magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C).

The failure to file written objections to a Magistrate Judge's report and recommendation constitutes a waiver of a *de novo* determination by the district court of an issue covered in the report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *see United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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The Court has reviewed Magistrate Judge Limbert's well-reasoned Report and Recommendation and adopts the same. Accordingly, defendant's motion to dismiss counts 1 and 2 of plaintiff's first amended complaint is GRANTED. Further, the Court declines to exercise supplemental jurisdiction over plaintiff's remaining state law claim, count 3, which is dismissed without prejudice.

IT IS SO ORDERED.

April 5, 2013
Date

s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge